Office-Supreme Court, U.S.
FILED
OCT 23 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 567

JAMES R. HOFFA, *Petitioner*,

v.

HONORABLE FRANK GRAY, JR., United States District Judge for the Middle District of Tennessee, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF

JACOB KOSSMAN
1325 Spruce Street
Philadelphia 7, Pa.
Attorney for James R. Hoffa

Z. T. OSBORN, JR.
218 Third Avenue, North
Nashville, Tennessee

JAMES E. HAGGERTY, SR.
3250 Guardian Building
Detroit, Michigan
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 567

JAMES R. HOFFA, *Petitioner,*

v.

HONORABLE FRANK GRAY, JR., United States District Judge for the Middle District of Tennessee,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

REPLY BRIEF

Because of the imprudence of the Government's actions, seeking to short-circuit the normal processes of this Court, petitioner has had but a few hours in which to prepare and submit this reply. The impetuousness of the Government must not be allowed to obscure the issues presented by this case.

1. Most remarkably, the Government's Brief in Opposition utterly fails to treat one of the prime issues

presented: whether the method of jury selection followed here, and the circumstances surrounding the selection, are not intolerable in light of the political nature of this prosecution. Petitioner, the widely-advertised target of an unprecedented legal campaign by the present Administration, was the announced subject of the special grand jury that was selected in the Middle District of Tennessee in January of this year. Because of the improper delegation of functions by the statutorily responsible officials, the actual power to select that grand jury was vested in a group comprised of postmasters, acting postmasters, bankers, and officials of the Tennessee courts. The probability of a "stacked" jury under these circumstances is too great to be tolerated; the failure of the trial judge to make any inquiry whatsoever into the extent of actual prejudice was the most fundamental error.

The Government's choice to remain silent on this issue, to ignore it if you will, loudly proclaims the vital importance of the matter. The unseemly haste of the Government in trying to by-pass the normal procedure of this Court underscores, if emphasis be needed, the political nature of this prosecution. The feverishness here evident cannot be ascribed to solicitude over the calendar of one District Judge. Rather it manifests the obsessive drive that permeates all stages of this crusade. *It represents the very atmosphere in which postmasters, bankers, and state court officials knowingly selected the special grand jury that was to hear charges against petitioner.*

The right to a fair and impartial grand jury, guaranteed by the Fifth Amendment to the Constitution, is at stake. Such a right is expressly denied by the

Government, and its actions are consistent with such a position. Vindication of that right is a matter sufficiently important and sufficiently urgent to justify invocation of the remedial writ of mandamus. Certainly the clearest case has been shown for this Court to hear the question on writ of certiorari.

2. The Government's feeble response to the second prong of petitioner's attack upon the indictment, namely the virtually total exclusion of substantial minority groups from the grand jury, confirms in effect petitioner's application for certiorari. Conceding that such an illegally impaneled grand jury vitiates every indictment returned in that District by that jury, the Government blithely declares that

> ". . . any defendant indicted by the same grand jury would be obliged to raise and preserve the objection in his own case. . . . The mere fact that all might have an issue in common should not entitle any single defendant to interlocutory review." (Brief in Opp., p. 14).

Thus does the Government show its insensitivity to an injury, described by this Court as not limited to the defendant—

> ". . . there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the process of our courts." *Ballard* v. *United States*, 329 U.S. 187, 195 (1946).

The vaunted "deep concern" of the Attorney General for the integrity and purity of the federal jury system (see Petition, p. 20) is translated here into the crude form of prosecution excess. The Government shows no awareness of the multiplicity of litigation it is sponsor-

ing. The Government shows no "deep concern" for the defendant who lacks the knowledge or the resources to fight the illegal jury. The Government is blinded to the larger ideals that are reflected through the jury system.

The Government has made the most illogical effort to rescue respondent from the patent error of holding that token representation of minority groups is all that the Constitution and the Judicial Code require on federal juries. In a classic understatement, the Government refers to this as a "questionable principle of law". (Brief in Opp., p. 6, n. 7). Rather than applying any such questionable principle of law, respondent's ruling, says the Government, "was based upon the total absence of any evidence supporting petitioner's allegations." (*Ibid.*). Since respondent refused to hear any evidence in support of petitioner's claim, his ruling cannot possibly have been based upon the absence of evidence. Nor did respondent ever so indicate. The basis of his ruling, that according to petitioner's allegations every minority group was represented by at least one member, is perfectly clear. The decision was made on the allegations and the offer of proof. It is a blatant acceptance of the "questionable principle" of tokenism.

The urgent importance of eradicating this blot on the federal jury system is too obvious to need elaboration.

3. The Government's attempt to distinguish the present case from *Platt* v. *Minnesota Mining & Mfg. Co.*, certiorari granted, No. 113, this Term, is most disingenuous. It is an argument born out of desperation to assert that mandamus lies to guard against an

inconvenient forum, but not to guarantee a fair and impartial jury. Yet that is precisely what the Government vehemently asserts, in purporting to distinguish between Rules 21(a) and 21(b) of the Federal Rules of Criminal Procedure. The relative triviality of the claimed right to a more convenient forum has not escaped the Government in its brief on the merits in the *Platt* case. (Platt Brief for the Government, pp. 17-22). The Government does not cite, *and cannot cite*, any case for the absurd contention it has advanced here that the more inconsequential the issue, the greater the availability of the extraordinary writ of mandamus.

For the reasons set forth in the petition for certiorari, highlighted by the Government's opposition, it is submitted that certiorari should be granted.

Respectfully submitted,

JACOB KOSSMAN
1325 Spruce Street
Philadelphia 7, Pa.
Attorney for James R. Hoffa

Z. T. OSBORN, JR.
218 Third Avenue, North
Nashville, Tennessee

JAMES E. HAGGERTY, SR.
3250 Guardian Building
Detroit, Michigan

Of Counsel

October, 1963